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10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT TACOMA

13 AT&T CORP. and Alascom, Inc., d/b/a AT&T
14 Alascom, Inc.,

15 Plaintiff,

16 v.

17 DAVID W. WALKER, DONALD J.
18 SCHROEDER, and TERRY A. GUNSEL,

19 Defendant.

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2 TERRENCE J. DONAHUE, Trustee for the
3 Chapter 7 Bankruptcy Estate of PT Cable, Inc.,

4 Plaintiff-in-Intervention,

5 v.

6 THE CARLYLE GROUP, L.P. a.k.a. The
7 Carlyle Group; NEPTUNE
COMMUNICATIONS, LLC; C/S VENTURE
INVESTORS, L.P.; CARLYLE U.S.
8 VENTURE PARTNERS, L.P.; CARLYLE
VENTURE PARTNERS, L.P.; CARLYLE
VENTURE COINVESTMENT, L.L.C.;
9 NEPTUNE GLOBAL SYSTEMS, LLC (U.S.);
DAVID W. WALKER and JANE DOE
10 WALKER; DONALD J. SCHROEDER and
JANE DOE SCHROEDER; BROOKE B.
11 COBURN and JANE DOE COBURN; TERRY
A. GUNSEL and JANE DOE GUNSEL;
WILLIAM E. CONWAY, JR. and JANE DOE
12 CONWAY; RICHARD G. DARMAN and
JANE DOE DARMAN; and PETER H.
13 SORENSEN; NEW YORK LIFE
INSURANCE COMPANY, a New York
14 mutual insurance company; NEW YORK LIFE
INSURANCE AND ANNUITY
15 CORPORATION, a Delaware corporation;
JEFFERSON-PILOT LIFE INSURANCE
COMPANY, a North Carolina corporation;
JEFFERSON-PILOT FINANCIAL
16 INSURANCE COMPANY, a Nebraska
corporation; KANE REECE ASSOCIATES,
INC., a New Jersey corporation; and JOHN
17 AND JANE DOES 1-100;

18 Defendants-in-Intervention.
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Case No. C04-5709FDB

23 ORDER GRANTING IN PART AND
DENYING IN PART MOTION OF
JANE DOE DEFENDANTS
WALKER, SCHROEDER, AND
GUNSEL FOR DISMISSAL and
GRANTING LEAVE TO AMEND
COMPLAINT IN INTERVENTION

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26 Defendants "Jane Doe" Walker, "Jane Doe" Schroeder, and "Jane Doe" Gunsel move to
dismiss the Complaint in Intervention for failure to state a claim, or, in the alternative, for Summary
ORDER - 2

1 Judgment. These defendants contend that David W. Walker and his wife Barbara T. Walker moved
 2 from Washington in January 2006 and are now domiciled in Florida; Donald J. Schroeder and his
 3 wife Deirdre C. Schroeder are domiciled in Florida; and Terry A. Gunsel and his wife Barbara Gunsel
 4 are domiciled in Pennsylvania. Defendants argue that while Washington's community property law
 5 allows for "community liability" for tortious conduct of one spouse in certain circumstances, such
 6 "community liability" binds only those marital communities domiciled within Washington.
 7 Defendants cite *G.W. Equip. Leasing, Inc. v. Mt. McKinley Fence Co., Inc.*, 982 P.2d 114 (Wash.
 8 Ct. App. 1999) for the proposition that the state law of the matrimonial domicile applies to determine
 9 the rights of the marital community. The Defendants argue that as to the Individuals' spouses in this
 10 case, there is no allegation that they participated in or are jointly responsible for the acts giving rise
 11 to the Trustee's claims. Under Washington law, "when the management of community property is at
 12 issue, the state with the most significant interests is typically the state where the spouses reside." *Id.*
 13 at 117. Therefore, because Florida and Pennsylvania are not community property states, *See* 23 Pa.
 14 Cons. Stat. Ann. § 3501(a); Fla. Stat. 61.075, the Trustee cannot sue the Individuals' spouses solely
 15 to ensure access to the community property.

16 Noting that discovery has not yet commenced, the Trustee responds consenting to the
 17 dismissal of "Jane Does" Schroeder and Gunsel without prejudice so long as the Court tolls the
 18 statute of limitations as to them for any claims based upon their receipt of or benefit from the
 19 proceeds of the "Illegal Dividend." The Trustee argues that it is possible that property owned by the
 20 Schroeders and/or Gunsels jointly may be answerable for any judgment against the directors
 21 individually, and that any transfers by the directors to their spouses or to "husband and wife as
 22 tenants by the entireties" may be fraudulent, citing, *e.g. U.S. v. Green*, 201 F.3d 251 (3rd Cir. 2000).

23 As to "Jane Doe" Walker's motion, the Trustee argues that Washington law should be
 24 applied to determine whether there exists a Walker marital community, and whether that community
 25 (or the property owned by the community) is liable for the conduct of David Walker. Washington,
 26 ORDER - 3

1 Florida, and Pennsylvania all apply the “most significant relationship” test to determine what
2 substantive law will be applied. *See, e.g., Ellis v. Barto*, 82 Wn. App. 454, 458, 918 P.2d 540
3 (1996)(torts). A choice of law determination is made only if there is an actual conflict between the
4 laws or interests of Washington and the laws or interests of another state. *Id.* 457. Here the laws of
5 Washington and those of Pennsylvania and Florida conflict as to the existence of a marital
6 community, and community property, and whether monetary liability for the tortious conduct of a
7 spouse constitutes a community debt for which community property is answerable. The Trustee
8 argues that under Washington law, the law of the place where a tort is committed generally controls
9 questions in connection with the act, the responsibility for it, and the nature of a cause of action
10 based thereon, provided no other jurisdiction has a more substantial relationship to the occurrence or
11 the parties. *Maag v. Voykovich*, 46 Wn.2d 302, 303, 208 P.2d 680 (1955); *Ellis*, 82 Wn. App. At
12 458). The Trustee points out that Washington courts follow the Restatement (Second) of Conflict of
13 Laws § 145 (1971) and determine the “most significant relationship” to the case by considering (a)
14 the place where the injury occurred; (b) the place where the conduct causing the injury occurred; (c)
15 the domicile, residence, nationality, place of incorporation, and place of business of the parties; and
16 (d) the place where the relationship, if any, between the parties is centered. *Fields v. Legacy Health*
17 *System* 413 F.3d 943, 952 (9th Cir. 2005). Additionally, the competing policies of the states involved
18 must be weighed against the parties’ expectations. *See Potlatch Fed. Credit. Union v. Kennedy*, 76
19 Wn.2d 806, 810, 459 P.2d 32 (1969).

20 Therefore, concludes the Trustee, under the foregoing principles, it is appropriate to apply
21 Washington law here because Washington was the principal place of business for PT Cable, the
22 wrongdoing alleged in the Complaint occurred in Washington, the injury to PT Cable occurred in
23 Washington, the Walkers resided in Washington at the time of the alleged wrongdoing (moving away
24 from Washington in January 2006), and the parties’ relationships (that between PT Cable and its
25 director, David Walker, and that between the Walkers’ themselves) are centered in Washington.
26 ORDER - 4

1 Florida, on the other hand, has no connection with the alleged wrongdoings or the injuries to PT
 2 Cable, and the parties' relationships are not centered in Florida, where the Walkers have resided only
 3 since January 2006. The Walkers had to have expected that the law regarding community property
 4 would control characterization of their property acquired during their marriage, and the creditors and
 5 shareholders of PT Cable have justifiable expectations regarding the applicability of Washington
 6 community property law as well.

7 Finally, the Trustee argues that the claim against the Walker Marital Community should not
 8 be dismissed because all property acquired during the marriage while residing in Washington is
 9 presumptively community property. RCW 26.16.030, and all debts or obligations incurred by one
 10 spouse for the arguable benefit of the marital community, are considered community obligations.
 11 *See, E.g. Brink v. Griffith*, 65 Wn.2d 253, 396 P.2d 793 (1964). Finally even if the tort is a separate
 12 tort of one spouse, creditors of the tortfeasor may reach the tortfeasor's one-half interest in
 13 community property. *See, e.g., deElche v. Jacobsen*, 95 Wn.2d 237, 622 P.2d 835 (1980).
 14 Moreover, the classification of movable property as community or separate is governed by the law of
 15 the domicile of the parties at the time of acquisition and community property retains its character
 16 even if the married couple moves to a common law state. 15A Am.Jur.2d Community Property §§
 17 14 and 16; *see also Seizer v. Sessions*, 132 Wn.2d 642, 651, 940 P.2d 261 (1997).

18 The Trustee asks that the Court grant leave to amend the Complaint to add certain
 19 allegations regarding the community property created during the time the Walkers were domiciled in
 20 Washington.

21 Having reviewed the parties contentions and citations to authority, the Court concludes that
 22 the Trustee makes the proper argument regarding the marital community issues in this case. The
 23 Motion as to "Jane Doe" Walker will be denied; the motion as to "Jane Doe" Schroeder and "Jane
 24 Doe" Gunsel will be granted without prejudice, but the Court will toll the statute of limitations as to
 25 them for any claims based upon their receipt of or benefit from the proceeds of the alleged "Illegal
 26 ORDER - 5

1 Dividend.” Additionally, the Trustee is granted leave to amend the Complaint to add allegations
2 regarding community liability.

3 ACCORDINGLY, IT IS ORDERED:

4 (1) Motion of Jane Doe Defendants Walker, Schroeder, and Gunsel to Dismiss [Dkt. # 101]
5 is DENIED as to “Jane Doe” Walker and GRANTED as to “Jane Doe” Schroeder and “Jane Doe”
6 Gunsel who are DISMISSED WITHOUT PREJUDICE, and the statute of limitations as to the
7 Trustee’s claims against “Jane Doe” Schroeder and “Jane Doe” Gunsel is tolled for any claims based
8 upon their receipt of or benefit from the proceeds of the alleged illegal dividend.

9 (2) The Trustee is given leave to amend the Complaint in Intervention to add allegations
10 regarding community liability.

11 DATED this 29th day of August, 2006.

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13 FRANKLIN D. BURGESS
14 UNITED STATES DISTRICT JUDGE
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